

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PB25WM-63992

_____)	
M.P.,)	<u>Administrative Action</u>
)	
Complainant,)	FINDING OF NO PROBABLE CAUSE
)	
v.)	
)	
Borough of Hasbrouck Heights,)	
)	
Respondent.)	
_____)	

On July 22, 2013, M.P. filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that the Borough of Hasbrouck Heights discriminated against him because of his disabilities, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. After carefully reviewing the DCR investigation, the Director hereby finds as follows.

Respondent is a municipality in Bergen County that operates a service for its senior citizens, known as the Senior Citizen Bus. The bus runs four days a week and is used to transport persons 62 years old or older "primarily for grocery shopping." See Aff. of Kronymak, Sept. 25, 2013, at ¶3. Respondent's Chief Financial Officer/Administrator, Michael Kronymak, stated:

The Senior Citizen Bus normally runs from Tuesday to Friday and it is a free service offered to the Borough's seniors. It does not follow a "bus route" but rather is destination bound, primarily for grocery shopping. That is to say, seniors register to use the Senior Bus. Once they are on the list, the bus driver will pick them up at their home and transport them to that day's destination.

[Ibid.]

Respondent posts a monthly "Senior Bus Calendar" at its Senior Center that indicates that during a certain week, for instance, the bus will be traveling to Walmart on Tuesday and Pathmark on Friday. Id. at Ex. B.

Respondent states that it bought the bus in 2008 with funds that the County received from the U.S. Department of Housing and Urban Development (HUD)'s Community Development Block Grant Program, and that those funds were secured with the understanding that the bus would be used only to transport senior citizens, which HUD defines as persons 62 or older.

Complainant is a 45 year-old resident of Hasbrouck Heights who was denied use of the bus at various times, including on June 12, 2013, despite explaining to Respondent that he is a person with disabilities, i.e., bi-polar disorder, nerve damage, and a herniated disc. Complainant does not dispute any of the above representations. However, he contends that because of his medical condition, he is entitled to be transported on the bus. He argues:

Although I do not meet the age requirements I am on SSD and meet the requirements for Senior Housing in this County. . . . [Kronyak] said Federal money is given for this so that's why I am perplexed by . . . [this] denial for me.

[Email from M.P. to Noreen Best, Director, Bergen County Division of Community Development, "Denied use of Senior Bus by you," Jun. 17, 2013.]

Kronyak and Best gave Complainant the telephone number for the Bergen County Department of Human Services' Community Transportation Services (CTS). Both told him that CTS provided transportation services for Hasbrouck residents with disabilities. Kronyak called CTS and inquired on Complainant's behalf. Kronyak stated that CTS told him that it had provided services to Complainant in the past. See Kronyak aff., at ¶18.

The Director of the Bergen County Housing Authority, Domingo Serade, stated that the County offers housing for senior citizens and qualified disabled individuals in a program called, "Senior/Disabled Housing." In other words, it is not exclusively senior housing, but a joint program that expressly includes senior citizens and persons with disabilities. Serade stated that Complainant would not be eligible for the senior citizen housing facility in Hasbrouck Heights because the municipality does not accept anyone under the age of 62.

Complainant told DCR that he saw a senior citizen with a cane use the Senior Citizen Bus and acknowledges that Respondent allows persons with disabilities aboard so long as they meet

the age requirement. The bus is equipped with a chairlift. (See Hasbrouck Heights, Ordinance 1726)

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit a complainant’s allegations of the verified complaint.” N.J.A.C. 13:4-10.2. For purposes of that determination, “probable cause” is defined as a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that the LAD was violated and that the matter should proceed to hearing. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

In this case, there is no allegation or evidence that Respondent prohibits persons with disabilities from using its Senior Citizen Bus if they meet the age requirement. Indeed, the fact that the bus is equipped with a chairlift suggests that Respondent fully anticipates transporting senior citizens with wheelchairs. Thus, Complainant’s allegation that he is being denied access because he has a disability is not supported by the record. He is being denied access because of his age. Although it is illegal to discriminate on the basis of age in employment and certain business transactions, one’s age is not a protected characteristic for purposes of public accommodation discrimination. See N.J.S.A. 10:-12(f).

The investigation found no merit in Complainant’s argument that he is entitled to use the service because he qualifies for the County’s “Senior/Disabled Housing” program. The fact that a County may elect to include someone in a county program does not mean that all municipalities are also required to exempt the person from any requirements in all unrelated municipal programs.

Although not pled in his verified complaint, Complainant may also be asserting that Respondent’s adherence to the age restriction amounts to an illegal refusal to reasonably accommodate him. Although a place of public accommodation must make such reasonable

modifications in policies as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability, it is not required to do so if "making the modifications would impose an undue burden on its operation." N.J.A.C. 13:13-4.11(a). Here, Respondent asserts that such a modification would be unduly burdensome because removing the *senior citizen* requirement from a *senior citizen* bus would dramatically and fundamentally alter the program, see N.J.A.C. 13:13-4.11(b) (noting that when determining whether an accommodation is unreasonable, factors to be considered include whether the accommodation sought will "result in a fundamental alteration to the goods, services, program or activity offered."), and because asking Respondent to violate the terms of the grant would be unreasonable, to say nothing of possibly illegal.

Moreover, Respondent attempted to accommodate Complainant by letting him know that he could receive the service he wanted (i.e., "a safe, trouble-free, and scheduled transportation system for the disabled, elderly, and frail residents of Bergen County . . . [provided] in a timely, courteous, and caring manner in all types of weather [where] [s]ervice is door-to-door when possible, and is provided by drivers who are specially trained to assist elderly and persons with disabilities") through a different government program. See Community Transportation, <http://www.co.bergen.nj.us/index.aspx?NID=554>. In view of the above, the weight of the evidence does not support the allegation that Complainant was discriminated against based on his disability.

WHEREFORE, it is on this 28th day of MARCH 2014, determined and found that no probable cause exists to credit Complainant's allegations of discrimination.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS